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August 1990



MONTANA

DEPARTMENT OF HIGHWAYS

CIVIL RIGHTS

NEWSLETTER



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## **EE0-5 REPORTS FOR JULY 1990**

The Federal Highway Administration (FHWA) requires an EE0-5 report from every contractor who worked during the month of July. These reports are to be sent directly to the Civil Rights Bureau (CRB), **no later than Friday, August 10, 1990.** *Each prime contractor and all sub-contractors must provide a report for each federal-aid highway project worked on during the month of July.* Instructions for completion of the EE0-5 are printed on the form.

The EE0-5's have been provided to all active contractors and subcontractors under a separate mailing. However, an EE0-5 form may be reproduced from the CRB manual, page I.C.18.

If any additional information is required, please contact Sam Prestipino at (406) 444-6331.



The Civil Rights Newsletter is published on a semi-annual basis by the Montana Department of Highway's Civil Rights Bureau.

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Due to budgetary constraints, the Civil Rights Bureau will be publishing the Civil Rights newsletter on a semi-annual basis. The newsletter will be published in August and March.

#### **1990 Montana Bid Lettings**

The Montana Highway Commission has approved the following bid letting dates for 1990.

August 23, 1990  
September 27, 1990  
October 25, 1990  
December 6, 1990

#### **1990 Bid Letting Dates**

Following are the 1990 schedules of bid lettings for North Dakota, South Dakota and Wyoming.

#### **North Dakota**

September 21, 1990  
November 9, 1990

#### **South Dakota**

August 15, 1990  
September 19, 1990  
October 16, 1990  
November 13, 1990

#### **Wyoming**

August 16, 1990  
September 13, 1990  
October 11, 1990  
November 8, 1990  
December 13, 1990

#### **Change of Certification Type**

Linda Groarke, Drafting, 3120 Lower Lost Prairie, Marion, Montana 59925 has changed from non-highway to highway related. Services provided include drafting related to surveying, Right-of-Way, topography, field experience chaining; engineering-septic systems, roads, structures; and miscellaneous.

#### **Change of Name:**

"Gorton Consulting Land Surveyors" has changed their name to "Mueller Consulting Land Surveyors".

#### **Name Correction:**

Asphalt Maintenance Specialist, Inc. d/b/a Northwestern Asphalt Maintenance, Inc.; instead of Asphalt Maintenance Specialists, Inc. d/b/a Northwest Asphalt Maintenance Specialists, Inc. as indicated in the April 18, 1990 DBE Directory Update.

## Directory Additions

The following firms were inadvertently omitted from the July 1990 Directory:

Burtch Construction  
P. O. Box 68  
Dixon, MT 59831  
Highway related D/WBE  
Expiration Date: June 1991  
Janet K. Burtch  
SBA 8(a) certified  
(406)246-3556  
Grading, drainage, clearing & grubbing, demolition,, pipe, bridge construction, truck hauling (dirt/aggregate supplies), permanent signs, landscaping (seeding, sod, erosion control, etc.), miscellaneous

Poteet Construction, Co., Inc.  
P. O. Box 7158  
Missoula, MT 59807  
Debora Poteet  
Highway related WBE  
Expiration Date: June 1991  
(406)728-9370  
Pipe, traffic control, permanent signs, surveying

## Change of Address

KM Construction, a certified WBE, has moved their office from Cascade to Bozeman. The new address is P.O. Box 1341, Bozeman, MT 59771. Phone: (406) 587-9307.

## MINORITY VENDOR PROFILE SYSTEM

### What is PROFILE?

It's a national computerized database which supplies information about minority-owned businesses.

### Who manages it?

The Minority Business Development Agency (MBDA) of the U.S. Department of Commerce manages PROFILE as a part of its minority business assistance program. Using PROFILE, MBDA's information clearinghouse in Washington, D.C. provides leads on minority vendors to potential purchases from a computer terminal which provides interactive access to the database.

### Invitation

MBDA invites minority entrepreneurs to register with PROFILE and encourages purchasing officials to consult PROFILE for names of minority vendors qualified to supply the goods and services they need.

### Why belong?

By registering your firm's "profile" in MBDA's nationwide system, you may increase your marketing opportunities.

### How to Register

To join, contact any Minority Business Development Center (MBDC). You can locate the nearest MBDC by calling an MBDA Regional Office.

### Qualifications

To qualify for PROFILE, you must certify that your firm is a non-retail business that:

- is at least 51 percent owned, controlled, and actively managed by minority persons;

and

- can provide products or services to other businesses, private organizations and government agencies.

**MBDA Regional Offices:**

221 Main Street  
12th Floor  
San Francisco, CA 94105  
(415) 974-9597

14th & Constitution Ave, NW  
Room 6711  
Washington, D.C. 20230  
(202) 377-8275

1371 Peachtree Street, NE  
Suite 505  
Atlanta, GA 30309  
(404) 347-4091

26 Federal Plaza  
Room 3720  
New York, NY 10278  
(212) 264-3262

55 East Monroe Street  
Suite 1440  
Chicago, IL 60603  
(312) 353-0182

1100 Commerce Street  
Room 7B19  
Dallas, TX 75242  
(214) 767-8001

**You may also contact:**

U.S. Department of Commerce  
Minority Business Development  
Agency  
Information Clearinghouse  
Room 6708  
14 & Constitution Ave, NW  
Washington, D.C. 20230  
(202) 377-2414

**SOLICITATION FOR INVITATION  
FOR BIDS**

The United States Department of Agriculture has provided the following information if you want to obtain their "Invitation to Bid List" for upcoming construction work with their agency.

To be placed on the mailing list write:

USDA  
Soil Conservation Service  
Kim A. Kidney  
Contracting Officer  
Federal Building, Room 443  
10 East Babcock Street  
Bozeman, MT 59715

It is necessary for you to provide them:

The name and complete address of your firm.

To whom the "Invitation to Bid List" should be sent, and

Whether your firm is:

A small business, a small disadvantaged business, a woman-owned small business, or a large business. (The USDA has a definition list for determining how to classify your firm.)

If you have any questions, call Kim A. Kidney - Contracting Officer, at (406)587-6863.

**SUBCONTRACTORS & EEO  
COMPLIANCE**

Subcontracts are entered into by the prime and subcontractor and are only approved by MDOH. Prime contractors are responsible for

monitoring subcontractor compliance in all aspects of the subcontract including Equal Employment Opportunity employment goals. The "EEO Special Provisions" attached to each subcontract are as binding to the subcontractor as any other contract specification.

It, therefore, becomes the prime's responsibility to assure all elements of the subcontract are accomplished. There are many ways for the prime to assure compliance with EEO Provisions. Some of the methods currently being used by prime contractors include:

- requiring the subcontractor to submit monthly employment reports for a specific project,
- requiring monthly "new hire" reports,
- conducting "mini-compliance reviews", and
- implementation of sanctions when employment goals are not met.

It is not sufficient for the prime contractor to "occasionally visually observe" the subcontractor's workforce. The prime must be able to demonstrate that subcontractors have exercised their best efforts to meet the employment goals established by the contract. At a minimum, best efforts must include:

- written and/or documented verbal communication with referral sources likely to yield qualified minority/female applicants,

- development of an availability analysis for the county where the work is occurring, and

- documented efforts to upgrade or train current minority/female employees to fulfill needs in other crafts.

For assistance in developing a plan to monitor subcontractor performance, contact Sam Prestipino at 444-6334.

### WORKFORCE SHORTAGES, COMPOSITION CHALLENGES FOR THE INDUSTRY IN 90's

By Richard J. Thorn, Executive Manager, AGC-Utah

Workforce shortages pose a serious problem for our nation's economy, and particularly the construction industry, over the next decade. While the labor demand for service industries is expected to rise dramatically, and the labor demand for goods producing industries is projected to fall, the construction industry will be unique. It will be the only goods-producing industry to experience an increase in the demand for labor.

Current employment in the construction industry is 5,485,000. This figure represents 5.1 percent of the total workforce employed today.

The Bureau of Labor Statistics projects the employment growth in the construction industry through 1995 at 1.2 percent per year. Under today's labor market conditions, these new positions might be filled; but with tomorrow's slow growing labor



supply, the story will be very different.

The 18-24 year-old segment of the U.S. population, the prime source of newcomers to the workforce, is decreasing. In 1980, this segment of the workforce numbered approximately 33 million. In 1995, it will number less than 25 million—a loss of one out of six people. The Census Bureau projects that, overall, there will be 12 million fewer new labor entrants in the next 14 years than there were in the past 14 years. This drop in the number of new entrants into the workforce is unprecedented in U.S. history.

The problem is compounded by the aging of the existing workforce. From 1986 to the year 2000, the number of people between ages 35-47 will rise 38 percent and the number between 48-53 will rise by 67 percent. Increasing the number of workers who will retire, die or leave the industry early will require more "replacement" workers. In fact, replacement needs will exceed growth needs by approximately two and one-half to one. In real numbers, that translates into approximately 210,000 workers who need to join the construction industry per year to satisfy both growth and replacement needs.

The changing composition of the workforce will also have a profound effect on the supply of labor for the construction industry. The workforce in the year 2000 will be composed of more women, minorities, and immigrant groups which have had a limited impact on the construction industry labor supply until the recent past.

In the year 2000:

Women will be 47 percent of the workforce.

Minorities will represent 15 percent of the total workforce and 58 percent of the workplace growth between 1986 and 2000. Immigrants will represent the largest share of the increase in population and the workforce since World War I.

If these people truly are the workforce of the future, their participation is not reflected in the present apprenticeship training programs. In a June 1988 report covering 70% of all apprenticeship and training, minorities represented eight percent of the total enrollment in construction classifications. Women represented only two percent.

Today, and over the next decade, construction faces a crisis that threatens the industry's competitiveness and our national economy. The industry's ability to compete in the marketplace is directly related to the quantity and quality of the construction workforce. Unless serious steps are taken to attract, train, and maintain an adequate supply of qualified construction workers, this nation's largest industry, and in turn the entire U.S. economy, face a grim future as we move into the twenty-first century.

Recognizing the above, the AGC has re-affirmed its commitment to building up the construction industry's employment potential. Through the AGC Education and Research Foundation, more than \$2.4 million in scholarships have

been awarded to 953 students at 144 universities for the completion of degrees in construction and civil engineering. Over 60 percent of the AGC Foundation's scholarship recipients are now employed by AGC contractors. Grants to university departments, recognition for college educators, and a student essay contest benefit all facets of the construction education process. The bottom line productivity of the industry has been enhanced through better on-site management because more than 80,000 individuals have taken advantage of the one million dollar investment in the AGC's supervisory training program.

Careers in construction is a topic that AGC staff discusses at junior high and high school career days, and through a joint effort with the National Association of Women in Construction, a special program called "Block Kids" has been initiated at the elementary school level to begin the future workforce thinking about construction as a career opportunity.

The AGC continues its advisory role in colleges and universities throughout the state, and through the AGC of Utah's apprenticeship and training program, the state's future craftsmen are learning valued skills.

(Excerpt from the April 23, 1990 Intermountain Contractor.)

### **NAWIC FOCUSES ON CAREER AWARENESS FROM HIGH SCHOOLS TO ELEMENTARY SCHOOLS**

In an effort to recruit new entrants to keep pace with the construction workforce of the 1990's, the National Association of Women in Construction has implemented two national programs. More than 100 NAWIC chapters across the U.S. and Canada held a Career Day on March 15 to create an awareness among junior high and high school students of the many construction careers available.

Throughout this decade, the construction industry is projected to grow at an annual rate of 2.1 percent. This number translates into 90,000 new workers required each year.

"When attrition from our aging workforce is factored in, we have the potential need for 270,000 new entrants each year," states Carol C. Ericson, president of NAWIC. The U.S. Census Bureau also projects that 42 percent of the workforce will be women.

"NAWIC is a primary resource for the industry to use to recruit young females to careers in construction," states Ms. Ericson. With so many of our NAWIC chapters participating in Career Day activities, we have created a national network charged with the task of informing both the educators and the students of the bright future that the construction industry holds during the 1990's.

(Excerpt from the April 23, 1990 Intermountain Contractor.)

## 1990 Civil Rights Legislation

The Civil Rights Bill of 1990 is most timely as issues move to the forefront and effect the upcoming reauthorization of the Highway of Transportation Act.

Following is a summary of Bill S.2104, "To amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment, and for other purposes.

### Protecting Americans Against Race Discrimination on the Job and in Private Contracts

Last year, in Patterson v. McLean Credit Union, the Supreme Court held that an 1866 statute barring intentional race discrimination in contracts (42 U.S.C. sec. 1981) does not prohibit racial harassment on the job and other forms of discrimination in the application of contracts. The Civil Rights Act of 1990 amends sec. 1981 to reaffirm that the right "to make and enforce contracts" includes the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship. By reaffirming the broad scope of sec. 1981, Congress will ensure that Americans may not be harassed, fired or otherwise discriminated against in contracts because of their race. Because sec. 1981 is the only federal statute barring race discrimination that is applicable to the 3.7 million employers with fewer than fifteen employees, it is vitally important to restore its broad ban on racism in contractual dealings.

### Restoring the Burden of Proof in Disparate Impact Cases

For eighteen years following Chief Justice Warren Burger's unanimous opinion for the Supreme Court in the landmark case of Griggs v. Duke Power Co., Title VII had placed on employers the burden of showing that the employment practices with a "disparate impact," (i.e., that operate to exclude women and minorities disproportionately) are required by business necessity. Last year, in Wards Cove Packing Co., v. Atonio, the Court effectively overruled this Griggs rule and held that, no matter how strong the proof of discriminatory effect, the employer need no longer prove that its practices are required by business necessity. Instead, victims of discrimination must bear the heavy burden of proving that the employer has no legal justification for its exclusionary practices. The Civil Rights Act of 1990 restores the Griggs rule by providing that, once a person proves that an employment practice has a disparate impact, the employer must justify the practice by showing that it is based on business necessity.

### Facilitating prompt and Orderly Challenges to Consent Decrees and Court Orders

In Martin v. Wilks, a case involving a court-approved plan by the City of Birmingham to remedy past racial discrimination in its fire department, the Supreme Court held last year that whites who sat on the sidelines could later challenge it in a new lawsuit. The Civil Rights Act of 1990 guarantees notice to persons

who might be adversely affected by a proposed court order, and a reasonable opportunity to challenge the order. But subsequent lawsuits challenging the court order will be barred except under certain unusual circumstances.

#### Making Clear that Job Bias is Always Illegal

In Price Waterhouse v. Hopkins, the Supreme Court suggested that employment decisions motivated at least in part by prejudice do not violate the law if the employer can show after the fact that the same decision would have been made if it had not engaged in intentional discrimination. The Civil Rights Act of 1990 provides that any reliance on prejudice in making employment decisions is illegal, while making clear that, in considering the appropriate relief for such discrimination, a court shall not order the hiring or promotion of a person not qualified for the position.

#### Granting Women and Religious and Ethnic Minorities the Right to Recover Damages for Intentional Employment Discrimination Now Available to Racial Minorities

Under present federal law, victims of sexual, religious, or ethnic harassment who remain on the job have no effective remedy. The Civil Rights Act of 1990 closes this loophole by amending Title VII to grant any victim of intentional discrimination the right to recover compensatory damages, and in egregious cases, punitive damages as well. The Act makes the remedies available for sex, religion and ethnic discrimination claims under Title VII the same as the remedies now

available under sec. 1981 for racial discrimination.

Correcting Statutes of Limitation in Lorraine v. AT&T Technologies, the Supreme Court held that the statute of limitations for challenging discriminatory seniority plans begins to run when the plan is adopted, rather than when the plan is applied to an individual. As a result, persons who were laid off pursuant to discriminatory seniority plans may be barred from bringing suit before they even knew they would be dismissed. The Act overrules Lorraine and permits persons to challenge discriminatory seniority plans when those plans actually harm them, rather than only when they are adopted. At the same time, the Act confirms that proof of discrimination in the adoption of the seniority plan that actually required the lay-off is required.

#### Restoring Fair and Effective Civil Rights Enforcement

The Civil Rights Act of 1990 also includes additional, technical provisions to ensure fair and effective civil rights enforcement and to address other Supreme Court decisions hampering initiation of antidiscrimination cases and recovery of attorneys' fees. These provisions extend the statute of limitations under Title VII and ensure that job bias victims will be able to obtain adequate legal assistance.

#### Reaffirming Generous Rules of Construction in Civil Rights Cases

The Act adopts rules of construction reaffirming the

intention of Congress that civil rights laws must be construed generously, in order to provide effective remedies to eliminate discrimination.

This Bill does not Address the Scope of Race-Conscious Remedies

The Act specifically makes clear that it does not affect or change the law governing affirmative action and other race-conscious remedies. The Act does not mandate quotas in any fashion.

Thus far 40 Senators and 156 members of the House of Representatives have put their stamp of approval on the Civil Rights Bill of 1990. It is most appropriate that Senator Kennedy took the lead in filing this Bill. Not only is it very timely, but it is of major significance to minorities, women, and every individual who has ever been "kept in their place."

The bill does not directly address affirmative action programs and we see that as a plus at this point. For the first time in history, women have received federal procurement through the DBE Program which provides an equal opportunity of at least 10 percent shared by all "disadvantaged groups." In many cases Civil Rights leaders have grouped women with minorities when professing their views on the necessity of affirmative action. NWBEA also sees affirmative action as necessary. To date, only federal agencies have made efforts to advance the benefits for women by allowing

women to participate in a program which allocates no less than 10 percent. Although the verbiage found in most state and local governments professing programs for "women and minorities" they still adhere to old policies of offering women secondary, lesser goals, or no goals at all.

To pass any form of legislation mandating the state or local programs as they exist now, would be an injustice to women. We would like to see legislation that endorses affirmative action and either include women in a joint goal, or raise the goal for women. Until this happens, women will never attain their rightful, equal position.

Minorities make up 23 percent of the national population. However, 52 percent of our population is female (42 percent White women), yet women are still rendered to a secondary position. To have goals unequal to minority goals is a travesty of justice.

Thirty percent of all businesses are owned, controlled, and managed by women. By the year 2000, it is predicted that this figure will increase to 50 percent. Yet, only one percent of all federal procurements are with women-owned businesses. This figure drops even more dramatically at the state and local levels. We must remedy these gross forms of injustice, and have a great deal of hope that the Civil Rights Bill of 1990 will be a major step in that direction. We hope to soon see legislation and goal setting which calls for equal

opportunities for women in all federal, state and local governments.

(Article written by: Barbara Joann Payne, President - NWBEA and Reprinted by permission the March, 1990 National Hard Hat & Shovel.)

### IMPROVING CASH FLOW

Reprinted by permission McNeill Stokes', Preventive Legal Management, August, 1989

By Tom Barfield

This is intended to be a practical "how-to" guide for seasoned veterans as well as newcomers to the construction industry. It is based on the observation that most trade contractors feel more comfortable in selling jobs and dealing with field problems than in collecting outstanding money. Indeed, more subcontractors seem to fail because of poor cash flow management rather than lack of work or technical expertise.

Certain proven techniques work consistently in obtaining faster payments. But achieving those superior results requires diligence and a positive attitude throughout the collection process. Just remember that the rewards are great and well worth an increased emphasis on collections.

There are payment problems unique to the construction industry. For example, subcontractors must deal with ingrained practices such as retainage, lack of privity with the owner (the source of funds), front-end

loading, pay-when-and-if-paid terms, inability to take back work for nonpayment, delayed partial and final payments, questionable backcharges, slow issuance of change orders and diversion of funds by prime contractors. Also, construction is a volatile industry, and even major companies are prone to sudden reversals. For these reasons, only a comprehensive and vigorous collections program can succeed.

This series will first address the collections process before the award of a job, and follow the normal job sequence through receipt of the final payment. The series will focus on situations in which subcontractors are working for general or prime contractors. However, most of the described techniques and approaches also apply to specialty contractors working directly for owners, as well as to lower-tier subcontractors and suppliers working for subcontractors.

### Basic Principles

The right attitude goes a long way toward assuring a successful collections program. It is important that all parties involved in the collections process--those in your company as well as your customers--are continually made aware that timely payment for properly performed work is an important and urgent concern of your organization.

The following steps will improve your collections results:

- \* Take the initiative by treating collections as a

vital part of your daily activities.

- \* Show your desire for results through actions, not words.
- \* Demonstrate in a tangible way your desire to get earned money into your hands. There is ample evidence that the squeaking wheel gets the grease. Contractors are more likely to see that payment goes to those who show they really care rather than those who simply go through the motions.
- \* Accept the fact that many contractors have developed systems designed to keep subcontractors off-balance and on the defensive as a way of paying less than due. Assume that the contractor has someone on its payroll being paid just to slow down your payments by offering vague promises or delaying your checks.

All of the good intentions in the world will not work without a carefully developed program. Such a program should be built on the precept that there is no substitute for actually getting money into your account. Only then can you cover the cost of project materials and work that you have financed.

The following steps are recommended as part of your program:

- \* Establish a good foundation. There are three building blocks for a sturdy foundation: equitable subcontract payment terms, a billing schedule that provides

adequate compensation during progress of the job, and a requisitioning system that helps your customer so that the customer does not hinder you with excuses for payment delays.

- \* Respect the lessons of a general contractor's track record. Be prepared if, based on your past experience with the customer or the reputation of the customer there is a history of abuses such as improper backcharges and excessive deductions from payments.
- \* Use your time and employees to your advantage. Many customer collection contacts can be made during regular visits and telephone calls about other matters. It is also helpful to prioritize contacts, separating the unusual from the routine in assigning follow-up responsibilities. In most instances, office employees can carry out a systematic program of routine contacts so that senior staff can concentrate on exceptional conditions and major problems.
- \* Do not hesitate to use leverage when you can. A typical situation is when a customer is looking for a great price, a scope change, acceleration or out-of-sequence work, special favors, and especially if the customer needs your help to meet its goal. The common element in each of these situations is that the customer needs special considerations from you. When these conditions arise, it is always best to make your agreement contingent on favorable payment terms and removal of any existing

obstacles to getting your money without delay.

## Special Strategies

### Prior to Award

The foundations for good payment results begin prior to the award of the contract. Without unrestricted entitlement to a check covering monies earned, it is all too easy for unscrupulous contractors to hide behind unfair payment terms and answer your pleas by advising you to "read your contract." Unfortunately, stringent subcontract language may cause you to be legally obligated to continue work for extensive periods with little or no money being payable to you. Worse still, unfair contingent payment language can cause you to lose the right to sue, proceed against a surety company or even maintain a lien on the job.

The steps shown below should be built into your routine to cover specific problem areas in negotiating fair payment terms.

#### 1. Bid on Your own Payment Terms

It is always better to develop your own proposal form, not only to clarify the payment terms on which your bid is based, but also to confirm your understanding about the scope of work, related work by others, scheduled time for performance and any unclear, contradictory or potentially troublesome items. Wording on the printed proposal form can be worked out with your attorney, but sufficient blank space should always be provided for specific items of clarification that apply to a particular job. Items to be

included in the printed wording will be shown later. However, caution should be taken to insert a specific percentage for retainage in the printed wording since that varies from job to job.

An alternative way of handling your bid clarifications is to state that the bid is subject to the payment terms of the latest American Institute of Architects Standard Subcontract (Document A-401). This approach gives you a good reason for using the A-401 form as the subcontract document for the job. Even if the contractor does not agree to use the A-401 form, you will have established the principle that your bid price was predicted on the equitable payment terms contained in that document.

Where telephone bids to a large number of potential contractors are involved, it may not be practical to clarify more than the most important points at the time verbal quotes are given. However, if you are named the successful contractor, you should confirm your bid to that organization on your proposal form or by letter including points of clarification and, of course, payment provisions. In doing so, you may want to accompany your proposal with a letter congratulating the successful contractor, expressing your interest in working on the job and perhaps including information about your organization and experience on similar projects.



## **2. Overcome Unfavorable Contractor (Owner) Payment Terms**

Avoid any language in the bid documents stating that the contractor's or owner's standard subcontract form will be used. By bidding without clarifications, you may find that you will be offered unsatisfactory payment terms and reminded that your bid price was to be based on those terms.

To avoid being precluded at the time of bid, you should, at the very least, make your bid subject to mutually agreed upon clarifications. This approach allows you to keep your options open to negotiate reasonable payments terms after having been designated as subcontractor for your class of work. Following the award of a job, it is usually possible to obtain fair payment terms utilizing the techniques outlined in ASA's publication entitled, *Fundamentals of Fair Subcontracts*.

Another method for overcoming unsatisfactory conditions is to base you bid on your own proposal terms. This method provides a clean, more specific basis for later reference; however, use of this method may also force you into a vulnerable negotiating position if, as a result, your customer insists on discussing terms up front.

You must also watch for bid conditions that say the contractor terms apply in spite of any exceptions, clarifications or contrary terms cited in subcontractor bids. You will need to take exception to such

contractor terms as part of your bid.

On public bid work, you may find that no exceptions are allowed and that even points of clarification would disqualify your bid. If you find the payment language to be unsatisfactory on such jobs, you may need to seek an addendum from the bidding agency that allows responsible pay entitlements.

(Reprinted by permission from the March, 1990 National Hard Hat & Shovel.)

## **SURETY BOND GUARANTEE PROGRAM**

### **Who Can Benefit**

Any qualified small business contractor required to have a bid, performance, or payment bond in order to obtain a contract, but unable to obtain a bond unless guaranteed.

### **Eligibility**

Businesses in the construction and service industries are eligible under the SBAs size standard if the average annual receipts for the last three fiscal years, including affiliates, do not exceed \$3.5 million. The local SBA office answers questions concerning size standard eligibility.

### **Types of Eligible Bonds**

Any contract bond (bid, performance or payment) is eligible for SBA guarantee if the bond is:

1. Covered by the Contracts Bonds section of the Surety Association of American Rating Manual;

2. Required by the invitation to bid; or

3. Executed by a Surety Company that is acceptable to the U.S. Treasury (Circular 570) and otherwise qualified by the SBA.

Some non-competitive, negotiated contracts are eligible in accordance with the appropriate Federal regulation.

### Size of Eligible Contracts

The SBA can guarantee bonds for contracts up to \$1,250,000.

### What Does SBA Guarantee?

In consideration of SBA's charge to the Surety Company of part of the gross bond premium, SBA guarantees the Surety Company against a percentage of its loss sustained on contracts up to \$1,250,000 in face value.

### Duties of Contractor

The contractor makes application for a specific bond with an agent/surety company of his/her choice by providing background, credit and financial information required by agent/surety company and the SBA. For this purpose, information gathering forms must be completed, including those required by SBA:

SBA Form 994: Application for Surety Bond Guarantee Assistance

SBA Form 912: Statement of Personal History (on first application and once every two calendar years thereafter)

SBA Form 994F: Schedule of Uncompleted Work on Hand (required initially and then at least quarterly)

### Duties of Agent/Surety Company

Once the contractor has completed these forms and has furnished the agent/surety company with sufficient underwriting information, the agent/surety company is to process and underwrite the application data furnished by the contractor in the same manner as any other contract bond application. The agent/surety company decides whether to:

1. Execute the bond without SBA's guarantee;
2. Execute the bond only with SBA'S guarantee; or
3. Decline the bond even with SBA's guarantee.

If the agent/surety company decides it can execute the bond only with SBA's guarantee, the next step is completing an Underwriting Review (SBA Form 990), and the Guarantee Agreement-Addendum (SBA Form 991), when required. These forms are submitted along with the 994, 912 and 994F, to the appropriate SBA office requesting the SBA's guarantee. If a final bond is being applied for, contractor's guarantee-fee check must be attached.

## Duties of SBA

SBA will determine performance capacity upon review of the information, documentation and underwriting rationale provided by the surety. If performance capacity has been established and all other aspects of the application have been approved, the Guarantee Agreement will be signed by a duly authorized SBA official and returned to the surety. If performance capacity is not self-evident in the surety's presentation, SBA will seek clarification from the surety underwriter or agent. If performance capacity cannot be reasonably assured, SBA will decline the guarantee application.

## The Cost of an SBA Guaranteed Bond

SBA charges a fee to both the contractor and the surety company, cited in the most recent edition of 13 CFR 115, as follows:

1. The small business concern shall pay SBA a guarantee fee of six dollars (\$6) per thousand of the contract amount.
2. When the bond is issued, the small business concern will pay the surety company's bond premium. This charge cannot exceed the level approved by the appropriate state regulatory body.
3. The surety company pays SBA a guarantee fee as determined by SBA.

(Reprinted by permission from the April 1990 South Dakota

Disadvantaged and Women Business Newsletter.)

## MINORITY AND WOMEN-OWNED BUSINESS ASSET MANAGEMENT AND DISPOSITION CONTRACTING

The Intermountain Consolidated Office of the Resolution Trust Corporation (RTC) by the authority of the Financial Institutions Reform Recovery and Enforcement Act (FIRREA) of 1989 is presently recruiting minority and women-owned businesses for participation in all contract solicitations issued by the RTC. Contract opportunities will include but not be limited to asset management, property management, brokerage and marketing, planning and construction, consulting services, appraisal services, etc.

Any minority or women-owned business that desires to contract with the RTC must register with the RTC. To qualify as a minority or women-owned business, it must be a minimum of 51% owned, controlled and managed by the individual or individuals upon whom eligibility is based.

After notifying the RTC of interest in contracting opportunities, appropriate Contractor Registration Forms will be mailed for completion and must be returned to RTC for review. Each firm certified to contract with the RTC must be in compliance with ethical, fitness and integrity requirements established by the authority of the FIRREA.

All applications for consideration received by RTC will be processed within 30 days of receipt of a completed Contractor Registration Request Form. Any business accepted or determined to be ineligible will be notified in writing within 30 days of the determination. Firms determined to be ineligible may request reconsideration. Questions pertaining to Minority and Women-Owned Business Contracting opportunities with RTC will be answered by calling David Garcia at (303) 556-6652 or writing to:

Resolution Trust Corporation  
Minority & Women-Owned Business Program  
1515 Arapahoe Street, Tower 3,  
Suite 800  
Denver, CO 80202

#### **FREE CATALOG FOR SMALL BUSINESSES**

The U.S. Small Business Administration (SBA) recently published the "1990 Catalog of Completed Research Studies." More than 400 research reports cover areas such as business formation, competition, exporting, finance and credit, government procurement, minority owned businesses and taxes. The catalog is free-of-charge upon request and comes complete with report titles, bibliographic information, price lists and order forms. For a free copy, write: The Office of Advocacy, SBA, Washington, D.C. 20416; or call 202/634-7600. (Reprinted by permission from the March-April 1990 MBE).

DJ:Q:CR:cg:9.gg

#### **LABOR DETERMINATION**

The Civil Rights Bureau has received a labor determination from the U.S. Department of Labor on the installation of multiplate on heavy/highway construction in Montana. The determination states that workers who install multiplate over 48 inches must receive ironworker wages. Multiplate which is 48 inches and under may receive laborer's wages.

If additional clarification is necessary, please call Sam Prestipino at 406-444-6331.

#### **SCOPE SHEETS AND FAX MACHINES"**

In our work with prime contractors, it is becoming apparent that DBE firms are missing contract opportunities because they are not getting prices to the right primes in the right way.

The primes usually want something in writing, even if it is not a formal subbid proposal. A "scope sheet" such as the one attached will usually do the job. (You and your attorney can modify this scope sheet to fit your individual situation.)

The large road builders and paving contractors have "fax" machines and have come to expect prices by fax. The scope sheet will work well for that. If you don't have a fax, the local printing shop or a nearby motel with one can usually be found.

By Metro Business Associates,  
Billings, MT

SCOPE SHEET

LETTER HEAD

FIRM NAME

ADDRESS

TELEPHONE #, FAX #

DATE:

TIME:

SCOPE SHEET ON PROJECT # \_\_\_\_\_

OWNER \_\_\_\_\_

BID OPENING DATE \_\_\_\_\_

TO: (PRIME)

We plan to bid on the following items on the above referenced project.

( ) The prices below are final.

( ) Final prices will be provided not later than 12 hours prior to the opening.

BID ITEM NUMBER	DESCRIPTION	# OF UNITS	PER UNIT PRICE	TOTAL
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Prices cover entire Item unless otherwise noted.

The prices above (do)(do not) include mobilization, bond, and contractors gross receipt tax. If bond is required, no retainage to be withheld. All items are tied except: \_\_\_\_\_

We (do)(do not) have any scheduling limitations on this work. Please call if you have special scheduling requirements.

Miscellaneous conditions: \_\_\_\_\_

We have seen Addendum # \_\_\_\_\_

This Scope Sheet does not constitute a formal contract. It is expected, that if prices are acceptable, a binding, legal contract in the usual form will be executed.

\_\_\_\_\_  
(company)

\_\_\_\_\_  
(signed by)

\_\_\_\_\_  
(date)

ADVANCED MANAGEMENT STRATEGIES FOR MONTANA DBE CONTRACTORS

SEPTEMBER 20-21, 1990

PONDEROSA INN, GREAT FALLS, MONTANA

A TWO DAY SEMINAR FOR:

CONSTRUCTION COMPANY OWNERS AND GENERAL MANAGERS  
OFFICE MANAGERS/CONTROLLERS  
ESTIMATORS/SUPERINTENDENTS

LEARN HOW TO:

INCREASE PROFITS  
IMPROVE YOUR CASH FLOW  
TALK TO YOUR BANKER, ACCOUNTANT, AND ATTORNEY  
AVOID SUBCONTRACTOR PROBLEMS  
TAP INTO ALL AVAILABLE MARKETS

(Presented in conjunction with Metro Business Associates Inc., our Technical Assistance contractor.)

This seminar is intended to familiarize managers with the techniques of financial management which will result in controlled business decisions and sustained profit and cash flow.

It will explain fundamental financial, marketing, and legal management in simple, clear language.

Speakers will be chosen because of their extensive experience and knowledge of small business and construction subcontracting.

ELIGIBILITY AND ENROLLMENT:

This seminar is open to all Montana DBE firms and prospective DBE firms. (Other bona fide Montana highway contractors will be admitted on a space available basis.) Complete the attached form and return as soon as possible to Metro Business Associates.

COST:

There is no cost to eligible participants. Lunch is included both days. (Such a Deal!)



## "COMMUNICATION . . . TRANSPORTING CIVIL RIGHTS INTO THE 90'S"

### WESTERN REGIONS FHWA-STATE CIVIL RIGHTS CONFERENCE

Hosted by: Nevada Department of Transportation  
1263 South Stewart Street  
Carson City, NV 89712

Dear Colleague:

We are pleased to provide you with advance notice of the **Western Regions, FHWA-State Civil Rights Conference**. The Conference will be held at the beautiful John Ascuaga's Nugget in Sparks, Nevada, beginning October 22 through 25, 1990.

It will provide a forum for the exchange of ideas, effective problem resolution, and materials (contract provisions, program documents, policies, forms, automated data monitoring techniques, etc.) amongst all involved in the civil rights programs of the U.S. Department of Transportation (FHWA, State, contractors, minority and female organizations).

So join your fellow transportation colleagues for 3-1/2 days of intense discussion to learn about the latest in civil rights program developments and proven techniques to implement these programs. Exchange ideas and information and provide your input on future program direction.

More details are on the reverse of this letter. Make your plans to attend and support the **Western Regions, FHWA-State Civil Rights Conference**. A registration packet will be mailed out soon.

Sincerely,

A handwritten signature in cursive script that reads 'Teresa A. Banks'. The signature is written in black ink and is positioned above the printed name and title.

Teresa A. Banks  
Conference Chairperson

## "COMMUNICATION . . . TRANSPORTING CIVIL RIGHTS INTO THE 90'S"

### WESTERN REGIONS FHWA-STATE CIVIL RIGHTS CONFERENCE

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**WHY:** To promote consistency and uniformity in implementing civil rights requirements in the Federal-aid highway program.

**WHEN:** October 22-25, 1990

**WHERE:** John Ascuaga's Nugget, 1100 Nugget Avenue, Sparks, Nevada 89431 Telephone: 800/648-1177 (toll free) or 702/356-3300

**WHO:** o FHWA Regional Administrators, Division and Assistant Division Administrators, District Engineers, Area Engineers and Civil Rights Specialists

o State Transportation/Highway Agency Directors, other top management, District and Project Engineers and Inspectors, Civil Rights Specialists, Internal EEO/AAP Staff, Compliance Officers, and Personnel Directors

o Majority and DBE contractors and contracting industry association representatives

o Supportive Services Program Personnel and consultants

**WHAT:** o Overview of the status of each civil rights program from the perspective of FHWA and State Highway Agencies' top management, contractors, including DBE's and minority and women's organizations.

o Exchange of ideas and materials that have worked.

o "Nuts and bolts" training in twelve (12) workshops covering the following:

- Title VI Program Development

- External On the Job (OJT) Training Programs

- State Highway Agency Internal EEO/AAP (3 workshops)

- Disadvantaged Business Enterprise (3 workshops)

- Supportive Services for On the Job Training and DBE (2 workshops)

- Contract Compliance (2 workshops)

- Civil Rights Legal Update (DBE, EEO, and Indian Preference)



*Do you know of other minority owned businesses who should be receiving MBE magazine?*

*Please pass this subscription application on to an associate who would like a personal free subscription.*



**CHECK ONE:**

- ☐ **YES**, I want to continue or begin receiving **Minority Business Entrepreneur FREE** if I am a qualified recipient.
- ☐ **NO**

**IMPORTANT INSTRUCTIONS:** In order to receive a free subscription, you must requalify your free subscription at least once every calendar year. Please complete all sections of this card.

Name \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Telephone \_\_\_\_\_

**1. Please check the type of facility that best describes your business classification. Check only one box:**

- ☐ **A** Professional Service (i.e., lawyer, architect, engineer, etc.)
- ☐ **B** Manufacturing
- ☐ **C** Construction
- ☐ **D** Service Company (i.e., food service, printing, janitorial, etc.)
- ☐ **E** Consultant
- ☐ **F** Transportation (i.e., trucking, messenger, etc.)
- ☐ **G** Supplier/Distributor
- ☐ **H** Transit District
- ☐ **J** Minority Association
- ☐ **K** Other Association

- ☐ **L** Government Agency
- ☐ **M** Public Utility
- ☐ **Z** Other (Explain) \_\_\_\_\_

**2. Please check the category that best describes your title classification. Check only one box:**

- ☐ **A** Owner
- ☐ **B** President
- ☐ **C** Manager
- ☐ **D** Affirmative Action Officer
- ☐ **E** Purchasing Agent
- ☐ **F** Minority Affairs Director
- ☐ **G** General Manager
- ☐ **H** Small Business Liaison Officer
- ☐ **J** Executive Director
- ☐ **Z** Other (Explain) \_\_\_\_\_

**19. Company Ownership**

- |                 | Sex                        |                            |
|-----------------|----------------------------|----------------------------|
|                 | M                          | F                          |
| Black           | <input type="checkbox"/> A | <input type="checkbox"/> B |
| Hispanic        | <input type="checkbox"/> C | <input type="checkbox"/> D |
| Asian           | <input type="checkbox"/> E | <input type="checkbox"/> F |
| American Indian | <input type="checkbox"/> G | <input type="checkbox"/> H |
| Other Minority  | <input type="checkbox"/> J | <input type="checkbox"/> K |
| White Female    |                            | <input type="checkbox"/> L |
| Majority Owned  | <input type="checkbox"/> M |                            |
| Government      | <input type="checkbox"/> N |                            |
| Other (Explain) | <input type="checkbox"/> Z |                            |

**20. Gross Annual Volume**

- ☐ **1** \$50,000 to 100,000
- ☐ **2** \$100,001 to 250,000
- ☐ **3** \$250,001 to 500,000
- ☐ **4** \$500,001 to 1,000,000
- ☐ **5** \$1,000,001 to 2,000,000
- ☐ **6** \$2,000,001 to 5,000,000
- ☐ **7** \$5,000,001 to 12,000,000
- ☐ **8** Over \$12,000,000

**21. Number of Employees**

- ☐ **1** 1 to 5
- ☐ **2** 6 to 15
- ☐ **3** 16 to 25
- ☐ **4** 26 to 50
- ☐ **5** 51 to 100
- ☐ **6** 101 to 200
- ☐ **7** 201 to 500
- ☐ **8** Over 500

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ATTN: HAROLD CHAMBERS  
DEADHEAD

## **DBE/WBE**

Montana Department of Highways  
2701 Prospect Ave.  
Helena, MT 59620

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